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SUPREME COURT OF THE UNITED STATES.

No. ~~81.~~ 31.

THE UNITED STATES, PLAINTIFFS IN ERROR,

VERSUS

ELEAZAR W. RIPLEY.

ON A WRIT OF ERROR TO THE DISTRICT COURT UNITED STATES FOR THE DISTRICT OF EASTERN LOUISIANA.

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COURT OF THE UNITED STATES, EASTERN DISTRICT OF LOUISIANA.

Be it remembered, that on the seventh day of September, in the year of our Lord one thousand eight hundred and twenty-two, into the district court of the United States for the then Louisiana district came the United States, by John W. Smith, their attorney, and filed the following petitions:

To the Honorable John Dick, Judge of the district court of the United States within and for the Louisiana district.

The petition of the United States, by their attorney within and for the district aforesaid, respectfully states:

That Eleazar W. Ripley, late major general in the army of the United States, is indebted to the United States, for balance of account, in the sum

of thirteen thousand one hundred and sixty-three dollars and ten cents, which, on the 9th day of April, in the year 1821, at the Treasury Department, was found against him on a settlement and statement of his account, and then afterwards duly examined, adjusted, admitted and certified; all which will more fully appear from the authenticated transcript thereof, hereunto annexed, and for greater certainty referred to: wherefore the said attorney, in the behalf aforesaid, prays that the said E. W. Ripley may be duly summoned to appear and answer, and after due proceedings had, may be adjudged to pay the said debt, with interest and costs; and he prays all other needful relief.

J. W. SMITH, *Att'y. U. S. La. Dist.*

To the Honorable John Dick, Judge of the district court of the United States, within and for the Louisiana district.

The petition of the United States, by their attorney within and for the district aforesaid, respectfully states:

That Eleazar W. Ripley, late brevet major general in the army of the United States, is indebted to the United States, for balance of account, in the sum of four thousand one hundred and fifty four dollars and ninety-five cents, which, on the 5th day of May, in the year 1821, at the Treasury Department was found against him on the settlement and statement of his account, and then afterwards duly examined, adjusted, admitted and certified; all which will more fully appear from the authenticated transcript thereof, hereunto annexed, and for greater certainty referred to.

Wherefore the said attorney, in the behalf aforesaid, prays that the said E. W. Ripley may be duly summoned to appear and answer, and after due proceedings had, may be adjudged to pay the said debt, with interest and costs; and he prays all other needful relief.

J. W. SMITH, *Att'y. U. S. La. Dist.*

And afterwards, to wit, on the 10th day of September, in the year 1822, the following citations were issued from the clerk's office, to wit:

The President of the United States to the Marshal of the Louisiana district, or his lawful deputy, greeting:

You are hereby commanded to summon Eleazar W. Ripley, so that he be and appear at the district court of the United States for the Louisiana district, to be holden in the city of New Orleans on the third Monday of October next, to answer to the complaint of the United States, and that he do file his defence or answer with the clerk of said court on or before the same, or judgment will be given against him by default; and have you then and there this writ.

Witness the honorable John Dick, judge of said court, at the city of New Orleans, this tenth day of September, 1822, and forty-seventh year of the independence of the United States.

SAM. H. HARPER, *Clerk*, [SEAL.]

DISTRICT COURT OF THE UNITED STATES FOR THE LOUISIANA DISTRICT.

The President of the United States to the Marshal of the Louisiana district, or his lawful deputy, greeting:

You are hereby commanded to summon Eleazar W. Ripley, so that he be and appear at the district court of the United States for the Louisiana dis-

trict, to be holden in the city of New Orleans on the third Monday of October next, to answer to the complaint of the United States, and that he do file his defence or answer with the clerk of said court, on or before the same, or judgment will be given against him by default.

Witness the honorable John Dick, judge of the said court at the city of New Orleans, this tenth day of September, 1822, and forty-seventh year of the independence of the United States.

SAM. H. HARPER, *Clerk*, [SEAL.]

Upon which citations the marshal made the following returns, to wit:

Served on E. W. Ripley a copy of petition and citation personally, on the 11th September, 1822, and returned into court same day.

JAMES NICHOLSON, *Dy. M.*

Served a copy of petition and citation on E. W. Ripley personally, on the 11th September, 1822, and returned into court same day.

JAMES NICHOLSON, *Dy. M.*

And afterwards, to wit, on the 23d day of November, 1822, the defendant filed the following answer, to wit:

UNITED STATES, *vs.* EL. W. RIPLEY. } *United States, Louisiana district.*

Same vs. *same.*

And now the defendant in these suits prays that the same may be consolidated, they being for a general account.

EL. W. RIPLEY.

And the said defendant for plea says, that he is not indebted to the said United States in manner and form as they have alleged, and thereof puts himself on the country.

E. W. RIPLEY.

And agreeably to the provisions in such cases made and ordained, he gives notice that he shall plead, by way of compensation and offset, the sum of thousand dollars, pay due him, being the difference between his brevet emoluments and his emoluments as a brigadier general, from to ; and also for money due him on account of subsistence, being the difference between double and triple rations from to , amounting to the sum of thousand dollars; and also the sum of dollars, due him on his clothing accounts and for munitions, &c.; and also the sum of dollars, due him for his contingent accounts; and also for the sum of thousand dollars, charged to him in the above suits of the United States, and which he alleges ought to be carried to the debit of other officers or of the government; whereupon he prays the foregoing items may be allowed him, and that a certificate of any balance due to him may be given by the jury in this case.

EL. W. RIPLEY.

And afterwards, to wit, on the 26th day of November, 1822, the following order was entered on the records, to wit:

Thursday, November 26th, 1822. The court met pursuant to adjournment; present, the honorable John Dick.

THE UNITED STATES *vs.* EL. W. RIPLEY.

On motion of E. W. Ripley, Esquire, ordered that these suits be consolidated.

And afterwards, to wit, on the 20th day of August, 1823, the defendant filed the following affidavit, to wit:

Papers wanted of the different Departments at Washington, in the case of the United States vs. *El. W. Ripley.*

1. A certified copy of all the accounts of El. W. Ripley, whether settled or cancelled, to wit, accounts settled 1816, ditto 1818, and accounts since; the accounts since to include all vouchers; these accounts are all wanted at full length.
2. Clothing accounts and receipts, charged against El. W. Ripley on the books of the government, (the abstract of them.)
3. Clothing vouchers left by El. W. Ripley for inspection with R. Cutts, and now improperly detained by W. Lee, auditor.
4. Copy of the President's order promulgated in 1803, allowing triple rations to the officer commanding on the New Orleans station.
5. Copies of pay rolls of all the commanders on the New Orleans station, from General Wilkinson to General Gaines, inclusive, to shew that they all drew triple rations, until a different construction was given in the case of El. W. Ripley.
6. Copies of General Scott's pay rolls, from the 25th July, 1814, to this time, with a statement of the troops quarterly reported by him in his department, shewing how, when and where, he has received brevet pay and emoluments, and how much, including forage and servants.
7. A statement of El. W. Ripley's pay rolls, from 25th July, 1814, to the period his resignation was accepted, shewing the quarterly reports of his department; and how, when and where, he has received brevet pay, and how much, including forage and servants.

EL. W. RIPLEY.

Personally appeared El. W. Ripley and made solemn oath, that the documents above stated are necessary to his defence, and that he cannot go to trial without them; and that he has no way to obtain them, unless the government at Washington give orders for their being transmitted to this court.

EL. W. RIPLEY.

Subscribed and sworn to before me, this 20th August, 1823.

SAM. H. HARPER, *Clerk.*

And afterwards, to wit, on the 13th day of December, 1825, the following order was entered on the records, to wit:

Tuesday, 13th December, 1825. The court met pursuant to adjournment; present, the honorable T. B. Robertson.

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THE UNITED STATES, vs. EL. W. RIPLEY. } *Two suits consolidated.*

On motion of defendant, ordered that commissions to take testimony of witnesses issue to J. Bermudez, Esq., of New Orleans, also to Publius R. R. Pruy, Esq, of Hancock county, state of Mississippi, and to Judge Brackenridge, of Pensacola; and it is further ordered that defendant have leave to file a supplemental answer.

And afterwards, to wit, on the 21st February, 1826, the following order was entered on record, to wit:

Tuesday, 21st February, 1826. The court met pursuant to adjournment; present, honorable T. B. Robertson.

THE UNITED STATES *vs.* EL. W. RIPLEY.

On motion of defendant, ordered that he have leave to file a supplemental answer.

And afterwards, to wit, on the 19th day of May, 1829, came the said defendant and filed the following affidavit, to wit:

UNITED STATES, vs. EL. W. RIPLEY. } *Dist. Court, U. S. East. Dist. La., May Term*, 1829.

The voluntary affidavit of Eleazar Wheelock Ripley, the defendant in the above entitled suit, deposeth: That he is not prepared to go to trial, in consequence of vouchers and documents which he has not as yet procured from different offices at Washington, and more particularly from not as yet having procured the disallowance of the different items of his account not yet allowed by the auditor; he further deposes, that he expects and believes, that before another term of this court he shall either be able to settle his account with the proper officers at Washington, or else to procure such statements, disallowances and vouchers as will enable him to have it tried by a jury. He further states, that this affidavit is not made for purpose of delay, but in order that justice may be done in the settlement of his accounts. The deponent further states, that he sent to Washington with a request to the Secretary of War that it might, pro forma, be disallowed, in order that he might submit it to a jury. But that formality has not as yet been complied with, and, of consequence, many claims on the government which this deponent has, he would not, by law, be allowed to submit to a jury.

EL. W. RIPLEY.

Sworn to in open court, 19th May, 1829.

F. W. LEA, *Clerk.*

And afterwards, to wit, on the 12th day of December, 1829, the said defendant filed the following supplemental answer, to wit:

THE UNITED STATES, vs. EL. W. RIPLEY. } *U. S. Court, East. District of Louisiana.*

The supplemental answer of Eleazar W. Ripley, the defendant in this suit, humbly shews, that in addition to allowances already made him by the

officers of the Treasury, he claims a further sum of nineteen thousand sixty-three dollars and twenty-two cents, being a sum due him at law and equity by the United States, agreeably to a detailed statement hereunto annexed, marked A; and he also claims a further equitable allowance, for certain distinct services, detailed on the second column of said account, which in due time will be made to appear; and after deducting from his said claim all the demand of the United States, he prays that, as is customary in such cases, the jury may certify in his favor for any balance they may find.

EL. W. RIPLEY.

And afterwards, to wit, on the 2d day of January, 1830, the following order was entered on record, to wit:

Saturday, 2d January, 1830. The court met pursuant to adjournment; present, honorable Sam. H. Harper.

1903 & 04.

THE UNITED STATES *vs.* EL. W. RIPLEY.

On motion of E. W. Ripley, and with the consent of the district attorney, ordered, that he have leave to take out commissions in this case to take testimony. And afterwards, to wit, on the 28th day of May, 1830, the following entry was made on the minutes, to wit:

Friday, 28th May, 1830. The court met pursuant to adjournment; present, honorable Sam. H. Harper.

1903 & 04.

THE UNITED STATES *vs.* EL. W. RIPLEY.

On this day came the parties, by their attorneys, and thereupon came a jury, to wit: Auguste Rieffel, A. Hill, A. Charbonnet, Sam. Elkins, F. A. Blanc, C. Millard, jr., Charles Gardiner, Ralph Jacobs, Peter Dubertrand, B. Lacoste, Seraphim Cuculler, and Antoine Dufour; who were sworn well and truly to try the issue joined between the parties, and a true verdict to give according to the evidence; when, after considerable progress in the cause, the further consideration whereof was postponed until to-morrow at 10 o'clock, A. M.

And afterwards, to wit, on the 29th day of May, 1830, the following verdict and judgment was entered on record, to wit:

Saturday, 28th May, 1830. The court met pursuant to adjournment; present, the honorable Sam. H. Harper.

1903 & 04.

THE UNITED STATES, *vs.* EL. W. RIPLEY. } *Consolidated cases.*

These causes came on before the same jury, originally empannelled therein, who, after hearing the evidence and arguments of counsel, retired under the charge of the court to consider of their verdict, and soon after returned the following verdict, to wit: "Verdict for defendant, as follows:

Amount of his account, less $500 lost, - - -	$13,060 22
Extra services at Washington, - - - -	2,000 00
	$15,060 22
Deducting therefrom balance due the United States, -	11,929 32
	$3,130 90

New Orleans, 29th May, 1830.

A. CHARBONNET."

Whereupon it is considered by the court, and ordered, that the United States take nothing by their petitions.

And afterwards, to wit, at the trial of this cause, on the day and year aforesaid, the United States, by their attorney aforesaid, took the following bill of exceptions, which were allowed, signed, and ordered to be filed, to wit:

UNITED STATES } *Dist. Court U. S. East. Dist. Louisiana.*
vs.
E. W. RIPLEY. }

Be it remembered, that on this 28th day of May, 1830, on the trial of this cause, the defendant offered the following testimony: The defendant entered in the army of the United States in the year 1812 as a lieutenant-colonel; was promoted at different periods until he attained the rank of major-general by brevet, which rank he held until the day of his resignation of his commission in the year 1817. During this interval the defendant was engaged in active service, and received the pay and emoluments to which his rank entitled him, under the laws of the United States and the regulations of the President of the United States and of the Department of War. Large sums of money passed through his hands and have passed ever by him to various officers in the army under his command, and to others who have been appointed by him to act as such, or were disbursed by him for the supplies of the troops by him commanded. He claimed to be allowed a commission on these disbursements, and offered evidence to prove that similar allowances had been made to other officers of the line of the army, who had been charged with the disbursements of public moneys; and also offered evidence to prove what would be a fair rate of compensation for such services. The defendant also claimed an allowance of extra pay or compensation for services performed by him, not within the line of his duty, in preparing plans for fortifications and for procuring and forwarding supplies of provisions, &c., to troops of the United States, beyond the limits of his military command, and offered testimony to prove the value of said services. To the introduction of all which testimony the attorney for the United States objected, on the ground that no other or further compensation could be allowed for disbursements made, or extra services rendered, as aforesaid, than such as were sanctioned or defined by the laws of the United States, by instructions of the President of the United States, or by regulations of the War Department legally made. But the court overruled the objection and admitted the testimony.

And be it further remembered, that on the trial of this cause, the testimony in the case having been closed, the attorney of the United States prayed the court to instruct the jury that no allowance in the form of com-

missions or otherwise, for moneys disbursed as aforesaid, or extra compensation for services rendered under the circumstances herein before stated, could be admitted as a legal and equitable set-off against the claims of the United States, other than such as were sanctioned and defined by the laws of the United States, by instructions of the President of the United States, or by regulations of the Department of War legally made. But the court refused so to instruct the jury, but stated to them that defendant was entitled to credit for commissions on disbursements, and allowances for extra services, and that they must judge of the rate and extent of such commissions and allowances. And now to the decision of the court in overruling the objections to the admission of the testimony aforesaid, and to the refusal of the court to instruct the jury, and to the charge of the court as aforesaid, the United States, by their attorney, John Slidell, tenders this their bill of exceptions, which is admitted and signed by the court.

SAM. H. HARPER.

And afterwards, to wit, at the trial of this cause, on the day and year aforesaid, the defendant took the following bill of exceptions, which were allowed, signed and ordered to be filed, to wit:

In the consolidated suits of the UNITED STATES *vs.* EL. W. RIPLEY. } *Court of the U. States, East. Dist. Louis'a.*

Be it remembered, that on the trial of this cause, after the defendant had proved that he was dangerously wounded in battle at the sortie from fort Erie, on the 17th September, 1814, and also that said wound has produced the highest grade of disability for manual labor since that time, the district attorney objected to the claim of a pension, on the ground that it could not be allowed for arrearages by the laws granting and regulating pensions, and without proof of the formalities required by these laws from persons claiming to be placed on the pension list having been complied with, and required the court so to charge the jury, which the court accordingly did, and thereupon made up their verdict and returned into court. The foreman of the jury, after handing the verdict to the court, stated, that it was the unanimous wish of the jury to allow the claim for arrearages of the pension, and again requested information whether it would be legal to allow it. Whereupon the court charged them a second time that they could not, and that the only remedy for defendant was to petition Congress on the subject; upon which the jury returned their verdict upon the other items of the account, exclusive of the claims for pension. Wherefore, in as much as the above does not appear of record, defendant tenders this his bill of exceptions, and prays it may be allowed and signed by the court.

SAM. H. HARPER.

And afterwards, to wit, on the 9th day of November, 1830, came the United States, by John Slidell, their attorney, and filed the following petition for a writ of error, to wit:

UNITED STATES *vs.* E. W. RIPLEY. } *U. S. District Court.*

To the Honorable Sam. H. Harper, Judge of the district court of the United States for the eastern district of Louisiana.

The United States, by John Slidell, their attorney for said district, re-

spectfully shews, that they are advised that there is error to their prejudice in a certain final judgment rendered by this court on the 29th May, 1830, in the above entitled suits of the United States *vs.* Eleazar W. Ripley, and pray that they may be allowed a writ of error to the Supreme Court of the United States.

JOHN SLIDELL, *Dist. Att'y.*

Judge's order.

Be it so.

SAM. H. HARPER, *Judge U. S.*

And afterwards, to wit, on the 9th day of November, 1830, the following writ of error was lodged in the clerk's office, to wit:

Court of the United States, Eastern district of Louisiana, ss.

1903 & 4.

THE UNITED STATES *vs.* E. W. RIPLEY. } *Consolidated cases.*

The President of the United States of America to the Honorable Samuel H. Harper, Judge of the district court of the United States for the eastern district of Louisiana.

Because on the record and process, and also on the giving of judgment of the plaints which was in said court before you, between the United States of America and E. W. Ripley, manifest error hath intervened, to the great damage of the said United States, as we from complaint are informed, we being willing that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the party aforesaid in this behalf, do hereby command you that you do, distinctly and plainly, under the seal of the district court for the eastern district of Louisiana, send the record and process of the plaint aforesaid, with all things concerning them, and this writ, into the Supreme Court of the United States, at the city of Washington, in the District of Columbia, on the second Monday in January next, that the record and process aforesaid being inspected, the said Supreme Court may cause to be done thereupon for correcting said error what of right, and according to the laws of the United States, ought to be done.

Witness the honorable John Marshall, Chief Justice of the United States, this ninth day of November, 1830.

F. W. LEA, *Clerk.*

And afterwards, to wit, on the 9th day of November, 1830, the following citation in error was issued from the clerk's office, to wit:

To E. W. Ripley, his agent or attorney, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, being the place of the sessions of the said court, on the second Monday in January next, pursuant to the within contained writ of error, to show cause, if any there be, why the judgment rendered against the United States, as within mentioned, should not be reversed, and why the error complained of should